Supreme Court, U.S.
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NO. 85-1467

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1985

STEWART S. HOFFMAN
Petitioner,

v.

DAVIDOFF EXTENSION, S.A.
Respondent

ON WRIT OF CERTIORARI

TO THE

UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION

Jack E. Dominik, Esq.
Attorney for Respondent
Suite 225
Miami Lakes Corp. Plaza
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(305) 556-9889

EDITOR'S NOTE

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QUESTIONS PRESENTED FOR REVIEW

It is the respondent's position that only three questions for review are presented:

1. Whether the U.S. Patent Office issued Trademark Registration No. 1,052,564 bearing the stylized name "Davidoff" and U.S. Patent Office issued Trademark Registration No. 1,058,684 bearing the word mark "Davidoff" is valid and subsisting and belongs to Davidoff Extension S.A., a Swiss corporation of Zug, Switzerland, and respondent herein.

2. Whether petitioner has infringed respondent's trademarks and should be enjoined against further infringement.

3. Whether or not the respondent herein has violated the United States embargo law of 1962 by selling, importing or distributing cigars or other smoking materials within the borders of the United States which contain Cuban tobacco.

LIST OF ALL PARTIES

The following list encompasses all of the parties in this case:

1. Stewart S. Hoffman, P.O. Box 25222, Tamarac, Florida 33321.

2. Davidoff International, Inc., U.S.A., P.O. Box 25222, Tamarac, Florida 33321.

3. Davidoff Extension, S.A., c/o Dr. J. David Meisser, Bahnhofstrasse 8, 7250 Klosters, Switzerland.

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TABLE OF AUTHORITIES

(None)

CITATIONS TO OPINIONS AND JUDGMENTS DELIVERED IN THE COURTS BELOW

The following incorporates the decisions delivered in the courts below:

1. In the U.S. District Court, Southern District of Florida., Judge James Lawrence King on November 30, 1984, held that the petitioner and his corporation, Davidoff International, Inc., U.S.A, infringed the valid and subsisting U.S. Patent Office issued Trademark Registrations Nos. 1,052,564 and 1,058,684 bearing the stylized and word marks, respectively, of "Davidoff". (Appendix E)

2. On November 15, 1985, the Eleventh Circuit Court of Appeals, in a one-page ruling, affirmed the lower Court. (Appendix F)

STATEMENT OF THE CASE

In this case, a counterfeiter, the petitioner, misappropriated and infringed two validly and registered issued U.S. trademarks belonging to a cigar and smoking material manufacturer, the respondent.

SUMMARY OF ARGUMENT

1. That petitioner knowingly misappropriated and infringed the respondent's U.S. Patent and Trademark Office registered trademarks Registration Nos. 1,052,564 (Appendix A) and 1,058,684 (Appendix B), which certificates bear the stylized and word marks "Davidoff", respectively. The petitioner should not be allowed to continue to infringe these valid and subsisting registered trademarks.

2. Petitioner has failed to prove to two Courts below, or to the United Customs Service, that the respondent is using Cuban tobacco in any of its smoking materials or cigars which enter the United States.

This is a typical South Florida run of the mill trademark counterfeit case. It differs only in that cigars rather than jeans, watches, sneakers and sunglasses are the subject matter. Otherwise it is the same. A greedy merchant with inferior goods sought to profit off a famous name. All Courts, District and Appeals have said no. Petitioner would now have this Court believe something new, apart from greed and chicanery, is present in this case. It is not.

The Davidoff name on cigars compares to Rolls Royce on cars, Rolex on watches, and Wedgewood on chinaware (Appendix G). The use of the name Davidoff over the years was partially restricted in the U.S. because of the Cuban tobacco embargo until 1983 when Davidoff (a Swiss group) developed a new source of Honduran

tobacco. Once genetically stabilized with the highest quality tobacco, the Davidoff and Zino cigars were introduced in the U.S. and the sales exploded. Petitioner Hoffman knew of Davidoff and decided to use the Davidoff name and not his own. Why? The question is selfanswered when his first advertisement (Appendix C) and lsyrt literature (Appendix D) is compared to the Davidoff trademark and style (Appendix A, B) a registered U.S. mark for over 15 years.

The sole defense is the "Cuban Connection." Petitioner's theory is that Cuban tobacco is entering the U.S. with the Davidoff name. If this be the case, Petitioner Hoffman's remedy is with U.S. Customs Service as the petition reveals.

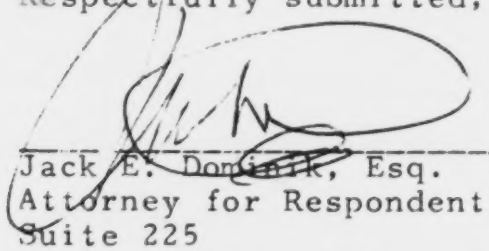
If the defense of petitioner is non-use of the mark Davidoff, the petition is self-contradictory when it alleges no use (p. 4) but then improper use (p. 5,6). It must be one or the other. It cannot be both.

In conclusion, no basis exists for this Court to entertain the petition. There is no conflict of laws. There is no question of national interest to resolve which has not been resolved. Counterfeiting of trademarks has been dealt with by Congress, confirmed by the executive branch in the Patent and Trademark Office, and enforced by the Courts. Each has played its role this case. This controversy has been resolved, is at an end, and should be accorded a decent funeral and burial by this Court with an order denying the petition.

CONCLUSION

In conclusion, the respondent respectfully requests this Court to deny petitioner's Writ of Certiorari in that petitioner has knowingly and willfully misappropriated and infringed respondent's registered U.S. trademarks. Further, petitioner has failed to prove that the respondent imports cigars or smoking materials containing Cuban tobacco within the borders of the United States.

Respectfully submitted,



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APPENDIX

A. Davidoff, respondent, U.S. Trademark Reg. No. 1,052,564. Trial Exhibit 3. A1-A2

B. Davidoff, respondent, U.S. Trademark Reg. No. 1,058,684. Trial Exhibit 4. A3-A4

C. Petitioner Hoffman Ad. Trial Ex. 14. A5-A7

D. Petitioner Hoffman Literature. A-8

E. District Court Final Judgment, and Findings of Fact and Conclusions of Law. A9-A35

F. Judgment of The U.S. Court of Appeals for the 11th Circuit, November 15, 1985. A36-A37

G. Newspaper article about Davidoff and translation. Trial Exhibit 7. A38-A55

№ 1052564

1776 - 1976

THE UNITED STATES OF AMERICA

CERTIFICATE OF REGISTRATION

This is to certify that the records of the Patent and Trademark Office show that an application was filed in said Office for registration of the Mark shown herein, a copy of said Mark and pertinent data from the Application being annexed hereto and made a part hereof.

And there having been due compliance with the requirements of the law and with the regulations prescribed by the Commissioner of Patents and Trademarks.

Upon examination, it appeared that the applicant was entitled to have said Mark registered under the Trademark Act of 1946 and the said Mark has been duly registered this day in the Patent and Trademark Office on the

PRINCIPAL REGISTER

to the registrant named herein.

This registration shall remain in force for Twenty Years unless sooner terminated as provided by law.

In Testimony Whereof, I have hereunto set my hand and caused the seal of the Patent and Trademark Office to be affixed this ninth day of November 1976.

PLAINTIFF'S EXHIBIT 3

A1

Prior U.S. Cl.: 8, 9, 17

United States Patent Office

Reg. No. 1,052,564

Registered Nov. 9, 1976

TRADEMARK

Principal Register

Davidoff

Davidoff Extension S.A. (Swiss corporation)
Alpenstrasse 14
Zug, Switzerland

For: CIGARS, CIGARETTES, PIPE TOBACCO, PIPES, CIGAR CASES, CIGARETTE CASES, LIGHTERS FOR CIGARS AND CIGARETTES, REFILLS FOR LIGHTERS FOR CIGARETTES AND CIGARS, AND MATCHES, in CLASS 34 (U.S. CLS. 8, 9 and 17).

First use May 7, 1940; in commerce 1965.

Ser. No. 61,493, filed Aug. 27, 1975.

P. P. GRAINICK, Supervisory Examiner

B. A. CHAPMAN, Examiner

REGISTERED FOR A TERM OF 20 YEARS FROM Nov. 9, 1976

Sec. 8 Accpt.

CERTIFIED TO BE A TRUE COPY OF THE REGISTRATION WHICH IS IN FULL FORCE AND EFFECT, WITH NOTATION OF ALL STATUTORY ACTIONS TAKEN THEREON, AS DISCLOSED BY THE RECORDS OF THE UNITED STATES PATENT AND TRADEMARK OFFICE. SAID RECORDS SHOW TITLE TO BE IN: Registrant

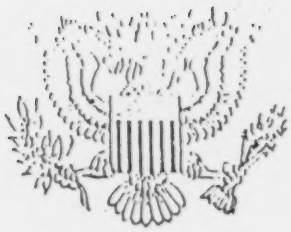
Attest

JAN 19 1983

Attesting Officer

COMMISSIONER OF PATENTS

A2



Nº 1058684

THE UNITED STATES OF AMERICA

CERTIFICATE OF REGISTRATION

This is to certify that the records of the Patent and Trademark Office show that an application was filed in said Office for registration of the Mark shown herein, a copy of said Mark and pertinent data from the Application being annexed hereto and made a part hereof,

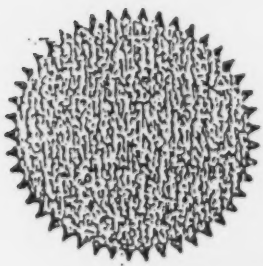
And there having been due compliance with the requirements of the law and with the regulations prescribed by the Commissioner of Patents and Trademarks,

Upon examination, it appeared that the applicant was entitled to have said Mark registered under the Trademark Act of 1946, and the said Mark has been duly registered this day in the Patent and Trademark Office on the

PRINCIPAL REGISTER

to the registrant named herein.

This registration shall remain in force for Twenty Years unless sooner terminated as provided by law.



In Testimony Whereof I have hereunto set my hand and caused the seal of the Patent and Trademark Office to be affixed this eighth day of February, 1977.

C. Marshall Dann

COMMISSIONER OF PATENTS AND TRADEMARKS

Int. Cl.: 34

Prior U.S. Cl.: 8, 9, 17

United States Patent Office

Reg. No. 1,058,684

Registered Feb. 8, 1977

TRADEMARK

Principal Register

DAVIDOFF

Davidoff Extension S.A. (Swiss corporation)
Alpenstrasse 14
Zug, Switzerland

For: CIGARS, CIGARETTES, PIPE TOBACCO, PIPES, CIGAR CASES, CIGARETTE CASES, LIGHTERS FOR CIGARS AND CIGARETTES, REFILLS FOR LIGHTERS FOR CIGARETTES AND CIGARS, AND MATCHES, in CLASS 34 (U.S. CLS. 8, 9 and 17).

First use May 7, 1940; in commerce 1965.

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D. A. CHAPMAN, Examiner

A4

PLAINTIFF'S EXHIBIT 14

smokeshop

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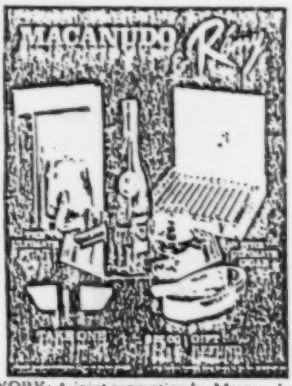
Macanudo and Remy Martin sponsoring a joint promotion



NEW YORK: A joint promotion by Macanudo imported Jamaican cigars and Remy Martin imported French cognac — launched in March — will continue through June in liquor stores and smokeshops in New York, Connecticut, Massachusetts, Metro Chicago and Metro Detroit.

Floor displays and easel posters in liquor stores announce the opportunity for connoisseurs of the "ultimate spirit" — Remy Martin cognac — to sample the "ultimate cigar" — Macanudo.

The displays and posters have tear-off coupons redeemable for a gift paquet of three Macanudo Portofino cigars when submitted with proof-of-purchase from a bottle of Remy Martin VSOP fine champagne cognac.

Easel posters in smokeshops offer connoisseurs of the "ultimate cigar" and the "ultimate spirit" a $5 refund when they remit proof-of-puchase of a box of Macanudo cigars and a bottle of Remy Martin Cenature Royal cognac, together with the coupon from the easel.

Oppenheimer bows Royal Dominicana

SADDLE BROOK, NJ: A. Oppenheimer has begun marketing Royal Dominicana cigars on a national basis. The new brand, which comes in five sizes retailing from $1. to $1.50, is a sister brand to the Dominican Republic's Jose Benito.

The five sizes are the 7¼" × 50 Churchill; the 6-¼" x 43 No. 1; the 6" × 46 Corona; the 5½" × 43 Nacional and the 6" × 35 Super Fino. Each features Ecuador wrappers, Central American binders and Dominican fillers and is packed in a 100% cedar box.

The handmade, long filler cigars are made under the supervision of Senor Espinosa, the former production head for one of Cuba's leading factories.

Satellite weather station

This satellite weather station features a barometer, hygrometer and a thermometer with C and F scales. It measures eight inches tall and has a suggested retail of $110. From: Hoffritz International, New York, NY.

Perkins names Herrick to vp post

BOSTON: The Stop & Shop Companies, Inc. has promoted David W. Herrick to vice president of store operations for Charles B. Perkins Co.

He previously served as director of store operations for Perkins. Herrick joined the company in 1970 and in 1971 was made manager of field audit. Since then, he has held positions as controller and field supervisor.

Davidoff names Hoffman

TAMARAC, FL: Stewart S. Hoffman, former president of Hoffman Tobacco Ltd., has been named president of Davidoff International Inc. - USA, a newly-formed marketer of generic cigars. The company initially is offering bundled cigars from Mexico, the Dominican Republic and Jamaica.

According to Hoffman, who earlier served as national sales manager for the Cervantes Cigar Co., Davidoff International will also engage in the marketing of bulk tobaccos, gifts and accessories at a later date.

The company will be represented in the East by Martin Loeb of Scarsdale, NY, and in the Midwest by Bob Lee of Johnson City, NY.

Davidoff International will have its headquarters office in the New York area.

FOR A BUNDLE OF PROFIT
TURN TO GENERIC CIGARS.

When it comes to generic imported cigar bundles, DAVIDOFF INTERNATIONAL offers you a rapid turnover and well above average profit in a totally hand made cigar.

That's right, our cigars are hand made by the finest craftsmen that use only choice tobaccos. So for the right price, shapes and sizes to meet your demand, turn to DAVIDOFF INTERNATIONAL for your generic cigars.

For further information contact

Davidoff

INTERNATIONAL INC. U.S.A.

P.O. BOX 25222

A7

FOR A BUNDLE OF PROFIT TURN TO GENERIC CIGARS.

When it comes to generic imported cigar bundles, DAVIDOFF INTERNATIONAL offers you a rapid turnover and well above average profit in a totally hand made cigar.

That's right, our cigars are hand made by the finest craftsmen that use only choice tobaccos. So for the right price, shapes and sizes to meet your demand, turn to DAVIDOFF INTERNATIONAL for your generic cigars.

For further information contact

Davidoff

INTERNATIONAL INC. U.S.A.

AB

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 83-1435CIVKING

DAVIDOFF EXTENSION, S.A.,
a Swiss Corporation,

Plaintiff,

FINAL
JUDGMENT

vs.

DAVIDOFF INTERNATIONAL, INC.,
a Florida corporation,
and Stewart S. Hoffman,

Defendants,
_____/

This action came on for trial before this Court on October 3, 1984, and the issues having been duly tried and a decision having been duly rendered it is hereby:

ORDERED and ADJUDGED that final judgment be, and it is, entered consistent with tis Court's separate "Order And Findings of Fact And Conclusions of Law" entered this same date, November 30, 1984. Said Order is incorporated by reference herein.

DONE and ORDERED in chambers at the United States Courthouse, Miami, Dade County Florida this 30th day of November, 1984.

JAMES LAWRENCE KING
CHIEF U.S. DISTRICT JUDGE
SOUTHERN DISTRICT COURT

cc: Jack E. Dominik
Stewart S. Hoffman

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 83-1435-CIV-KING

DAVIDOFF EXTENSION, S.A.,
a Swiss Corporation,

Plaintiff,

vs.

DAVIDOFF INTERNATIONAL, INC.,
a Florida corporation,
and Stewart S. Hoffman,

Defendants,
_____/

ORDER AND
FINDINGS OF FACT
AND CONCLUSIONS OF LAW

This matter came on before the Court initially on August 17, 1983 on the plaintiff's order to show cause for preliminary injunction. At that hearing both defendants were represented by counsel, and plaintiff offered the testimony of Georges Schelker its sales manager and proffered its Exhibits. The matter was continued to take the testimony by way of deposition of defendant Stewart S. Hoffman on August 23, 1983. Thereafter

the parties by counsel and by all the evidence adduced in the case thus far were heard in open court on August 31, 1983. The Court having heard the testimony of plaintiff's witness, seen its Exhibits, and having reviewed the pleadings and evidence submitted by the defendants, the defendants having not offered the testimony of Steward S. Hoffman taken August 23, 1983 but the plaintiff having made it a matter of record, and this Court having been otherwise advised fully on the applicable law and a previous case in this Court captioned Davidoff Extension S.A. v. Davidoff Comercio Industria Ltda., et al (83-0649-Civ-JLK), where this Court entered an injunction and judgment by default against the defendant therein and in favor of Davidoff Extension, S.A., temporarily enjoined the defendants in this case from using the name Davidoff in connection with the sale of any tobacco

related products. On October 3, 1984, trial was held. Plainitffs presented Mr. Thomas Bensen, their exclusive United States distributor who testified as to the ongoing and escalating sales of Davidoff products in the United States. He was examined as an adverse witness by defendants primarily as to the Davidoff "Cuban connection."

Based upon the entire record in these proceedings and pursuant to Rules 52(a) and 65 FRCP the findings of fact and conclusions of law of this Court are:

Findings of Fact

1. Plaintiff, Davidoff Extension, S.A., a Swiss corporation, and its related companies including Oettinger Imex AG, is a well-known international marketer of tobacco products and has registered its trademark "Davidoff" with the United States Patent and Trademark Office, Reg. Nos. 1,052,564 (PX A) and 1,058,684 (PX

B). The trademark is used only on more expensive tobacco products, and plaintiff anticipated sales of trademarked tobacco products in the United States this year of approximately $800,000 (Aug. 17 Tr. 20). This estimate was confirmed as met by Mr. Bensen during his testimony on October 3, 1984 (Oct. 3, Tr.17). Plaintiff's sales internationally of Davidoff tobacco products exceed one-hundred million dollars per year (PX C and D). The first sale (PX L) to plaintiff's distributor, Bensen International, to fill the pipeline in anticipation of a nine city promotion by Zino Davidoff and the Baroness Rothschild (PX M, Aug. 17 Tr. 12-13) was admitted by defendant Hoffman to amount to approximately $500,000 (Hoffman dep. pp.83-85).

2. Plaintiff, through its exclusive importer, George Bensen & Son, Incorporated, enjoyed gross sales of

Davidoff products in the United States in 1983 of between $300,000 to $400,000 (Oct. 3, Tr.17). Further, an approximation at gross sales for the year of 1984 will show a steady increase up to $500,000 (Oct. 3, Tr.17). Tom Bensen, president of George Bensen & Son, Incorporated, testified that the prestige of handling the Davidoff line has been very important to his company (Oct. 3, Tr.24-25). He also testified as to inventory shortages of Davidoff cigars following many of the promotions in the United States (Oct. 3, Tr.20).

3. Zino Davidoff, son of the founder of the original Davidoff store in 1907 and in joint promotion with the Baroness Rothschild of Davidoff cigars and Rothschild wines, has had interviews, television talk shows, and other publicity releases in nine major United States cities during the month of October 1983 (Oct. 3, Tr.18-19). The dates and

scheduling was offered in evidence by plaintiff through Georges Schelker (PX M, Aug. 17 Tr. 12-13), on the letterhead of John R. Walsh Associates of New York. This and a second tour in 1984 was confirmed by Mr. Bensen (Oct. 3, Tr.20-21). Zino Davidoff is a worldwide known personality in the tobacco industry and has achieved extensive press media (EX R Oct. 3, Tr.11) coverage and also published a book on cigars (PX E).

4. Individual defendant Stewart S. Hoffman was employed by Consolidated Cigar for approximately thirteen years; and then by Nicaraguan Cigar Company as national sales manger for a period of about three years. During the Nicaraguan revolution he returned to the United States to form Hoffman Cigar Company in about 1980 (Hoffman dep. pp.7-8). Hoffman admitted knowing of the Davidoff cigars for many years (Hoffman deposition, p3). Hoffman

went to visit plaintiff Davidoff's store in Toronto and spoke there with its manager, a Mr. Hines (Hoffman dep. p.35). Although Stewart Hoffman had never been in Europe, he was well aware of the Davidoff brand name, knew of Zino Davidoff's book, and was of the opinion that the Davidoff cigars are the most expensive cigars in the world but not necessarily the best (Hoffman Dep. pp.30,41-42).

5. Only after visiting plaintiff's Davidoff store in Toronto did Stewart S. Hoffman form defendant Davidoff International, Inc. on December 2, 1982. He thereafter waited until January 3, 1983 to first contact "Davidoff International" in Europe. He used the letterhead of "Hoffman Tobacco Ltd." (PX H). Plaintiff Davidoff of Europe had no interest in doing business with Mr. Hoffman (PX H). Hoffman stated that his purpose for adopting the name was to protect it while

doing business with the plaintiff (Hoffman deposition p34). Hoffman further stated that his name "Hoffman" was dead in the industry and could not support him (Hoffman pp110,111).

6. Sometime in the Spring of 1983 Hoffman worked with Smoke Shop Magazine, and previously an advertising agency, to prepare a one page ad for "generic cigars" using the Davidoff name as well as Davidoff's distinctive stylized script form of the name on the advertising (PX G). Immediately upon learning of this advertising, plainitff's Telex was sent to Mr. Hoffman to cease and desist using the name "Davidoff" (PX H).

7. At all of the hearings and in all of the pleadings the defendants failed to present any proof as to why Stewart S. Hoffman or Davidoff International, Inc., his Florida corporation, has any rights in the name "Davidoff". Various defenses

were offered indicating that there were two or three foreign contests over the right to the name Davidoff, but plaintiff offered Exhibit P setting forth its numerous registrations of the mark Davidoff including in its country of origin, Switzerland. Plaintiff further represents in Exhibit P that over seven hundred applications to register the related Davidoff marks have been filed throughout the world. One newspaper article offered by the defendant (DX, Aug. 31 Tr. 19-20), quoted the Cuban Government as claiming to have some right in the mark Davidoff, but even then it asserted that the Cuban government was paying a royalty to the Davidoff people for using the mark. This fact was not denied at trial, and along with other exhibits, undermines the defenses to the effect that the mark Davidoff is controlled by the Cuban Government.

8. The testimony submitted of Dr. J. David Meisser (Meisser 87-89), the plaintiff's corporate trademark counsel, established the fact that Cubatabaco disclaims any proprietary rights in the trademark "Davidoff" (attached hereto as Exhibit A). This was documented and legalized and admitted in evidence with Dr. Meisser's deposition.

9. Defendant alleges that the Davidoff cigars coming into the United States contain Cuban tobacco, and that this importation is a violation of certain laws. Mr. Bensen, the plaintiff's exclusive United States distributor, said that this could not occur. He explained that the cigars coming into the United States are imported from Honduras, and a certificate of origin on a Form A is required. Because Honduras enjoys a "favored-nation" status, the cigars come in duty-free. All of the invoices are

marked "These tobaccos contain no Cuban tobaccos of any origin" and this also appears on the boxes. Mr. Bensen was of the opinion that neither the manufacturers in Honduras or Davidoff Extension S.A. in Switzerland would jeopardize the relationship between themselves and the United States Customs Service by utilizing any amount of Cuban tobacco (Oct. 3, Tr.23-24). On cross-examination Mr. Bensen also explained that if Davidoff Havana Cuban cigars are being sold in the United States they are being sold in direct violation of his agreement with the plaintiff (Oct. 3, Tr.34). If any Davidoff Cuban tobacco cigars are coming into the United States, they may be coming in through the mails from individuals, but without any sponsorship of the plaintiff (Oct. 3, Tr.35).

10. The most that defendants offered as to the establishment of their business

were sales of approximately $1,000 per month (Hoffman p58) and that the advertising altogether represented an investment of $2,000 (Hoffman p58). The plaintiff's background advertising and volume as noted by all the Exhibits as well as the scheduled promotional tours vastly outweigh any investment defendants have in the name Davidoff.

11. Defendants' infringement was deliberate, wiliful, and fraudulent and in full knowledge of plaintiff's prior use and reputation. In addition to the utilization of the name "Davidoff" defendants have used the same stylization and script.

12. Where any finding of fact, in whole or in part, can be deemed a conclusion of law it shall. Where any conclusion of law, in whole or in part can be deemed a finding of fact, it shall.

Conclusions of Law

I. Plaintiff's trademark registrations 1,052,564 (PX A) and 1,058,684 (PX B) are valid.

II. It has bee established that the burden of proof required to cancel a registered trademark based upon "unlawful use" is that of a clear and convincing nature. Satinine Societa in Nome Collettivo di S.A. e.m. Usellini v. P.A.B. Produits et Appareils de Beaute, 209 USPQ 958 (TTAB 1981). No direct evidence was submitted by the defendants that plaintiff was shipping cigars containing Cuban tobacco into the United States. Mr. Bensen, plaintiff's exclusive distributor in the United States, further rebutted this inference in detail by explaining that the favored nation status of duty-free cigars would be lost if the Davidoff cigars were not pure Honduran cigars and submitted pursuant to the

appropriate certification. In addition, he stated it would violate his exclusive agreement. He did concede, however, that others not under control of any of the parties here, could send individual boxes of Cuban cigars into the United States. Such activity, if it exists, does not effect the plaintiff in this action or the plaintiff's rights. Therefore, the defendants have not met this burden of clear and convincing proof.

III. The existence of a corporate charter with the name Davidoff is no defense since under Florida law as set forth in Shatterproof Glass Corp. v. Buckmaster, 256 So.2nd 531 (Fla. 2nd DCA 1972), it was held:

> "...if the domestic corporation adopts and uses a name with a fraudulent purpose or with actual knowledge of the existence of the name being used by a foreign corporation, even though the foreign corporation is not qualified to do business in the state, an injunc-

> tion will issue to restrain the domestic corporation from using the name."

Thus there can be no question under Shatterproof that a permanent injunction should issue since Stewart S. Hoffman admitted knowing of the Davidoff name prior to forming defendant Davidoff International, Inc., and indeed confessed it in the correspondence introduced in evidence in this case as Exhibit H.

IV. Defendants urge that plaintiff has not used its name or its products in the United States, and that the products cannot be purchased. This is inconsistent with the testimony of plaintiff's sales manager Georges S. Schelker and certainly rebutted by the $500,000 order from Bensen for the October 1983 promotion held in nine cities and outlined in plaintiff's Exhibit M. Further, plaintiff is a Swiss corporation. It has registered the

Trademark Davidoff in Switzerland (PX P). The United States and Switzerland are both members of the International Convention for the Protection of Industrial Property (Paris Union): see, Calimann, The Law of Unfair Competition, Trademarks and Monopolies §99.1(a) and App. XX (3d Ed. 1982 Supp.) for a list of the member countries and the text of the treaty (Paris Convention) creating the Paris Union. The Paris Convention is self-executing and, by virtue of Article VI of the U.S. Constitution, a part of the law to be enforced by the courts; Vanity Fair Mills, Inc. v. T. Eaton Co., Ltd., 234 F.2d 633, 109 USPQ 438 (2d Cir. 1956), cert. denied 352 U.S. 871 (1956). Also, Lanham Act §44 (15 USC 1126) explicitly implements the Paris convention together with other conventions or treaties relating to trademarks, trade names, or unfair competition; §44(b) (15 USC

1126(b)); SCM Corp. v. Langis Foods Ltd., 539 F.2d 196, 190 USPQ 288 (D.C.Cir. 1976); L'Aiglon Apparel, Inc. v. Lana Lobell, Inc., 214 F.2d 649, 102 USPW 94 (3d Cir. 1954). The provisions of the Paris Convention and Lanham Act §44 most pertinent to the present case appear to be the following three benefits conferred on plaintiff:

(1) Plaintiff may obtain a U.S. Trademark Registration of its trademark "Davidoff" for tobacco products, smokers' articles, etc. without alieging use of its trademark in the United States because plaintiff has a Swiss Trademark Registration for its trademark: Lanham Act §44(c), (e) (15 USC 1126(c)(e)); Paris Convention Article 6 quinquies; Callmann §99.2(e)(1);

(2) Plaintiff's trade name is to be protected without the obligation of any filing or registration: Lanham Act §44(g) (15 USC 1126 (g)); Paris Convention Article 8; Callmann §99.2(e)(7); and

(3) Plaintiff is to be protected from unfair competition: Lanham Act §44(h) (15 USC 1126(h)); Paris Convention Article 10bis; Callman §99.2(b).

In particular, Article 10 bis of the Paris Convention provides:

> "(1) The countries of the Union are bound to assure to nationals of such countries effective protection against unfair competition.
>
> (2) Any act of competition contrary to honest practices in industrial or commercial mattters constitutes an act of unfair competition.
>
> (3) The following in particular shall be prohibited:
>
> 1. all acts of such a nature as to create confusion by any means whatever with the establishment, the

goods, or the industrial or commercial activites, of a competitor;

2. false allegations in the course of trade of such a nature at to discredit the establishment, the goods, or the industrial or commercial activities, of a competitor;

3. indications or allegations the use of which in the course of trade is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity of the goods."

As consequence, defendants' argument that plaintiff is not using its trademark in the United States and that is U.S. Registrations of the trademark were fraudulent appears inconsequential.

V. That defendants, in addition to infringing plaintiff's trademark pursuant to 15 U.S.C. 1117, have also violated 15 U.S.C. 1125(a) in that using the name "Davidoff" on generic cigars by defendants implies that the cigars were supplied by the plaintiff, when they were not. This

thus imputes a false designation of origin of the cigars.

VI. That defendants actions of deliberate, intentional, willful, and fraudulent infringement entitle plaintiff to award of reasonable attorney's fees pursuant to 15 U.S.C. 1117. Defendant Hoffman has actual knowledge of the Davidoff cigar name and reputation and had actually visited a Davidoff store in Toronto, Canada prior to appropriating the name for incorporation in the State of Florida, and utilizing the stylized script to advertise and sell cigars. The Lanham Act 15 U.S.C. 1117 as amended sets forth the monetary remedies available to a successful plaintiff: "The Court in exceptional cases may award reasonable attorney's fees to a prevailing party." This provision was amended in 1985 to close a gap in protection afforded to the trademark owner.

> "In suits brought primarily to obtain an injunction, attorneys' fees may be more important than treble damages. Frequently, in a flagrant infringement where the infringement action is brought promptly, the measurable damages are nominal. Section 35, as proposed to be amended, makes clear that a court has discretion as to whether award trebled damages, attorneys' fees, or both, or neither."

H.R. Rep. No. 93-524, 93rd Cong., First Sess., 5-6 (1972). The term "exceptional" was defined as "cases where the acts of infringement can be characterized as 'malicious', 'fraudulent', 'deliberate' or 'willful'." Id. It has been consistently held, both in the courts of this circuit and elsewhere, that cases of trademark counterfeiting fall within the "exceptional" category, thus subjecting the defendants to an award of attorneys' fees. Playboy Enterprises, Inc. v. P.K. Sorren Export Co. of Florida, 546 F.Supp. 987 (S.D.Fla. 1982); Playboy Enterprises,

Inc. v. Baccarat Clothing Co., 692 F.2d 1272 (9th Cir. 1982). In the present case, it is submitted that the evidence is sufficient to find defendants herein liable for such attorneys' fees.

THEREFORE, IT IS HEREBY ordered and adjudged, based upon the above findings of fact and applicable law pursuant to Rule 52(a) FRCP that, pursuant to Rule 58(2) FRCP and Rule 65 FRCP the preliminary injunction in favor of the plaintiff issued against both defendants Davidoff International, Inc., a Florida corporation and an individual defendant Stewart S. Hoffman be made permanent as follows:

A. That defendants Davidoff International, Inc. and Stewart S. Hoffman, jointly and severally, and all their successors, assigns, affiliates, agents, servants, employees, and representatives, and all persons, firms, and corporations in active concert with

these defendants, or either of them, who receive notice hereof, be and hereby are enjoined and restrained:

(a) from directly or indirectly using the name "Davidoff" or any similar name in connection with any commerce in the United States including, but not limited to, tobacco or smokers' products, whether by use as a business name, trademark, service mark, or any other designation;

(b) from engaging in any other conduct that tends to falsely represent that, or is likely to confuse, mislead and deceive purchasers, defendants' customers or members of the

public into believing that, tobacco products of defendant originate from plaintiff or that defendants or defendants' products have been sponsored, approved or licensed by plaintiff or are in some way affiliated or connected with plaintiff or plaintiff's products in any way whatsoever.

B. That plaintiff be repaid its Bond with the Clerk of this Court in the amount of $1,000.

C. Defendants Davidoff International, Inc. and Stewart S. Hoffman are directed to change the corporate name of defendant Davidoff International, Inc. to a name not confusingly similar to Davidoff within thirty (30) days.

D. Plaintiffs shall submit an affidavit of actual attorney's fees and expenses for this Court's review awarding reasonable attorney's fees, costs, and expenses pursuant to 15 U.S.C. 1117.

E. This Court shall retain continuing jurisdiction over the parties and subject matter for further implementation of this order.

DONE AND ORDERED in Chambers at Miami, Dade County, Florida this 30 day of November, 1984.

JAMES LAWRENCE KING
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Jack E. Dominik
Stewart S. Hoffman

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 85-5022
Non-Argument Calendar

D.C. Docket No. 83-01435

DAVIDOFF EXTENSION, S.A.
a Swiss Corporation,

Plaintiff-Appellee,

versus

DAVIDOFF INTERNATIONAL, INC.,
U.S.A., a Florida Corporation
and STEWART S. HOFFMAN,

Defendants-Appellants

Appeal from the United States District
Court for the Southern
District of Florida

Before TJOFLAT, VANCE and KRAVITCH,
Circuit Judges.

J U D G M E N T

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Florida, and was taken under submission by the Court upon the record

and briefs on file, pursuant to Circuit Rule 23;

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby AFFIRMED:

It is further ordered that defendants-appellants pay to plaintiff-appellee, the costs on appeal to be taxed by the Clerk of this Court.

Entered: September 27, 1985
For the Court: Spencer D. Mercer, Clerk

By: Warren A. Godfrey
Deputy Clerk

ISSUED AS MANDATE: NOV 15 1985

Jeder Zug ein Fränkli:

Das Geheimnis der „großen" Zigarre

Zu Besuch bei Zino Davidoff in Genf

Von Ernst Voges

Der Genfer Tabakwarenfacheinzelhändler Zino Davidoff ist in der Welt der Zigarre zur Majestät geworden. Er hat dabei weder mit Tricks noch mit genialen Marketingideen gearbeitet. Die Basis seines Erfolges war die Liebe zum tabakrichten braunen Produkt, eine Liebe, die viele Tabakwarenfachhändler mit ihm teilten und teilen. Dabei war sein Geschmack wie der von Oskar Wilde beschriebene ganz einfach, er setzte auf das Beste: die echte Havanna-Zigarre. Daß sie in Genf als Stadt der internationalen Institutionen und Organisationen auch das Teuerste war, war hierbei eher von Vorteil als von Nachteil.

Das nach einem Großbrand im vorigen Jahr gänzlich neu errichtete Davidoff-Fachgeschäft befindet sich in der City von Genf, in der Rue de Rive 2, an dem Platz, an dem es von Davidoffs Vater vor 70 Jahren gegründet wurde. Der freundlich und übersichtlich gestaltete Geschäftsraum umfaßt 90 Quadratmeter, denen unter sparsamster Nutzung 46 Quadratmeter für Lager und Büro und ein Havanna-Keller von 30 Quadratmeter angegliedert sind. Für fachmännische Bedienung sorgen zwölf Verkäuferinnen und Verkäufer, deren Stolz es ist, den Kunden mit einem Sortiment dienen zu können, das alle wesentlichen Tabakerzeugnisse der Welt umfaßt. In seinem Mittelpunkt steht nach alter Tradition insbesondere die Havanna-Zigarre, die den Namen Davidoff inzwischen zu weltweitem Ruhm geführt hat. Es handelt sich dabei um beste Produkte aus den in Kuba angebauten hochwertigsten Tabaken, darunter mit Vorrang die Erzeugnisse des Vuelta-Abajo-Distriktes.

Am Anfang eine Tabakbar

Das Davidoff-Geschäft in Genf entwickelte sich aus einer Tabakbar, die in ihrem Sortiment hauptsächlich Zigaretten führte, die teilweise aus eigener Produktion stammten und damals noch von Hand hergestellt wurden. Erst später rückte die Zigarre in den Mittelpunkt. Langsam festigte sich dann für das Davidoff-Geschäft der Ruf als zentrale Einkaufsquelle für exponierte Zigarrenraucher, die den Ruhm des Hauses über die Grenzen Genfs und der Schweiz hinaus trugen.

„Stumpli" dies nicht der Fall gewesen sei. Ob er wohl etwas falsch gemacht habe beim Rauchen der teuren Zigarren? Das könne schon sein, sagte Davidoff, und schlug ihm vor, daß sie es einmal gemeinsam versuchen sollten. Er zündete ihm und sich selbst eine Havanna mit der entsprechenden fachgerechten Handhabung an und sagte, daß man eine Zigarre ruhig und regelmäßig rauchen müsse, nicht zu hastig daran ziehen dürfe und immer schon darauf achten sollte, daß sie gut in Brand bliebe. Beim Rauchen guter Zigarren müsse man sich der Zigarre mit Liebe und Aufmerksamkeit widmen, da es sonst nicht ausgeschlossen wäre, daß sie auch einmal ausginge. Und Zino Davidoff empfahl ihm noch etwas, das ihm sicher helfen könne, einen langsamen Rhythmus beim Rauchen einzuhalten: Jeder Zug, daran solle er stets denken, koste ihn einen Franken. Auf diese Art würde er den Genuß richtig zu würdigen verstehen. Der Bauer aus dem Berner Oberland, so,

Der eindrucksvolle Prospektdeckel der Davidoff-Sortimentsdokumentation.

Fotos: Inf

dern auch für die übrigen in anderen Ländern gegründeten Davidoff-Pilot-Geschäfte.

Insgesamt verfügt die Davidoff-Gruppe bis jetzt über zwölf solcher Pilot-Geschäfte. Neben Genf als Stammsitz umfassen sie Häuser in London, Paris, Amsterdam, Brüssel, Toronto, Montreal, Singapur, Kuala Lumpur, Djakarta und Frankfurt sowie zwei Häuser in Hongkong, davon eines auf der Halbinsel Kaulun. Darüber hinaus liegt der Verkauf und Vertrieb der Davidoff-Zigarren weltweit bei 22 Agenturen, die, wie beispielsweise die Firma Gebr. Heinemann in Deutschland, nach einem speziellen Verfahren die Märkte nicht nur mit dem Davidoff-Sortiment versorgen, sondern auch die entsprechenden „Verkaufshilfen" organisieren. Hierzu gehören eine grundliche Unterweisung über die Sortimentspflege während der Zigarrenlagerung und eine ins einzelne gehende Schulung des Verkaufspersonals mit dem Ziel, durch eine sachgemäße Handhabung des Zigarrenrituals den Rauchern alle Kenntnisse zu vermitteln, die zu einem vollkommenen Tabakgenuß gehören.

Depotzentralen in den einzelnen Ländern leiten das Davidoff-Sortiment an eine beschränkte, speziell geprüfte und ausgewählte Zahl Depositäre weiter. Meist handelt es sich bei ihnen um Tabakwaren-Facheinzelhandelsgeschäfte, die nicht nur andere renommierte Fachhandelsunternehmen mit Davidoff-Zigarren beliefern, sondern vornehmlich auch Hotels und Restaurants mit besonders gutem Ruf. In der Regel wird ihnen ein Humidor mit dem Sortiment Davidoff-Grand-Reserve mit fünf Zigarrentypen, einem Zigarrenabschneider in Scherenform und langen Zündhölzern zum Anbrennen der Zigarre zur Verfügung gestellt. Ein Kontrollsystem sorgt dafür, daß dieses Sortiment ständig ergänzt und der Zustand des Humidors laufend überprüft wird, um sicherzugehen, daß der Davidoff-Raucher immer ein Produkt bekommt, das dem Davidoff-Qualitätsbegriff durch optimale Pflege und Konditionierung entspricht. Das Davidoff-System mit Pilot- und Depot-Unternehmen sowie ausgesuchten Verkaufsstellen ist in allen Ländern praktikabel, in denen

...irre

die übrigen in anderen ...ndeten Davidoff-Pilot-...

...gt die Davidoff-Gruppe ...zwölf solcher Pilot-Ge-... Genf als Stammsitz ...äuser in London, Paris, ...ssel, Toronto, Montre-...ala Lumpur, Djakarta sowie zwei Häuser in ...n eines auf der Halbin-...rüber hinaus liegt der ...ertrieb der Davidoff-Zi-... bei 22 Agenturen, die, ...eise die Firma Gebr. ... Deutschland, nach ...n Verfahren die Märkte ...lem Davidoff-Sortiment ...lern auch die entspre-...ufshilfen" organisieren.

...e gründliche Unter-... Sortimentspflege ...arrenlagerung und eine ...chende Schulung des ...als mit dem Ziel, durch ...le Handhabung des Zi-...n Rauchern alle Kennt-...nissen, die zu einem ...Tabakgenuß gehören ... in den einzelnen Län-... Davidoff-Sortiment an ...e, speziell geprüfte und ...ihl Depositäre weiter. ...es sich bei ihnen um ...hacheinzelhandelsge-...ht nur andere renom-...delsunternehmen mit ...en beliefern, sondern ...ch Hotels und Restau-...ders gutem Ruf. In der ...n ein Humidor mit dem ...loff-Grand-Reserve mit ...e n, einem Zigarrenab-...herenform und langen ...m Anbrennen der Zigar-... gestellt. Ein Kontroll-...für, daß dieses Sorti-...gänzt und der Zustand ...wfend überprüft wird, ...daß der Davidoff-...rodukt bekommt, ...vidoff-Qualitätsbegriff ...Pflege und Konditionie-... Das Davidoff System ...d Depot Unternehmen ...hten Verkaufsstellen ist ...

Die Partner von heute: Zino Davidoff (rechts) und Dr. Ernst Schneider (links).

Blick in den Verkaufsraum des neuen Geschäftes am gleichen Platz, an dem es vor siegzig Jahren von Zino Davidoffs Vater gegründet wurde.

...den richtigen Umgang mit Zigarren in ...lauf zu bringen. Die so „erzogenen" Zigarrenraucher geben ihrerseits das richtige Ritual im Freundes- und Bekanntenkreis weiter, so daß auch die Raucher von Zigarren erreicht werden, die durch den „geschulten" Kreis der Vortrags- und Unterrichtungskurse direkt nicht erreicht werden.

Zigarren behandeln wie schöne Frauen

Zigarren müssen nach den Worten von Dr. Ernst Schneider wie schöne Frauen behandelt werden, man muß sie heben, um sie voll genießen zu können. Tatsächlich setzt sich das Davidoff-gebot an Pfeifen, Pfeifentabak und Raucherbedarfsartikeln auf dem Markt ist. Als zweites Bein neben dem Davidoff Havanna-Geschäft wurde mit Sumatra-, Brasil- und anderen international bekannten Tabaken das Zino-Sortiment geschaffen, zu dem als neue Linie in Honduras hergestellte Zigarren gehören. Auch bei dem Zino-Sortiment gilt die Regel, nur gute Qualitäten aus guten Tabaken zu bieten.

Die Oettinger-Gruppe

Mit Zino Davidoff und Dr. Ernst Schneider fand zwei Persönlichkeiten zusammen, die für den Aufbau eines

n . Wie ernsthaft dies immer war, eine kleine Story. Da kam vor n ein Bauer aus dem Berner land zu Zino Davidoff ins Geschäft, Sortiment echter Havannas im ster angelockt hatte. Er erlöff, daß er ein durchaus ader Bauer sei und es sich könne, auch einmal ein paar von euren „Stümpli" im Schaufenster ufen. Schon seit Jahren sei er penraucher, und sie schmeckten auch ganz gut — er verwies dabei ne bestimmte Marke aus der enproduktion —, aber er wolle ganz gern wissen, wie die „wirklich n Sachen" ihm schmecken würden. erstand er eine Kiste feinster nna-Zigarren und zog davon. Nach Tagen kam er wieder und beklagte daß er mit den teuren Stumpen nicht so recht seine Freude gehabt . sie waren ihm immer ausgegan- während vorher bei den billigen

Bis vor zwölf Jahren betrieb sich das Genfer Geschäft im Alleinbesitz von Zino Davidoff. Da er keine an der Weiterführung interessierten Erben hat — seine einzige Tochter ist mit einem Zürcher Arzt verheiratet —, bot er es zum Verkauf an. So kam es zu einer Übereinkunft mit Dr. Ernst Schneider, Mitinhaber und Geschäftsführer des Tabakwaren Groß- und -Einzelhandels-Unternehmens Oettinger AG in Basel, der bereit war, den stolzen Preis zu zahlen, den Zino Davidoff für seinen internationales Ansehen genießenden „Zigarrenladen" in der Genfer Altstadt verlangte. Zino Davidoff blieb hierbei als Träger der Davidoff-Tradition dem Unternehmen als Partner von Dr. Ernst Schneider verbunden und steht dem Unternehmen als Experte für Auswahl und Mischung der Zigarrentabake sowie als Berater für Sortimentsgestaltung und Verkauf nicht nur für das Genfer Geschäft zur Verfügung, son-

nach dem Brand im vorigen Jahr neu errichtete Davidoff-Geschäft in der Genfer
Vor dem Eingang: Zino Davidoff (links) und Ramon Zehnder (rechts).

[illegible] Monopols erfolgen muß.

Weniger, aber etwas Gutes

Die von Dr. Ernst Schneider entwickelte Marketing-Idee für Davidoff geht von einem auf Individualität zugeschnittenen Grundgedanken aus, der auf eine exklusive Raucherschicht zielt, an die nach dem Motto verkauft werden kann: rauche weniger, aber etwas Gutes. Prinzip für die Davidoff-Sortimente ist deshalb die Verarbeitung ausschließlich erstklassiger Tabake ohne Verwendung irgendwelcher Schönungsmittel oder homogenisierten Tabaks und weitgehender Herstellung in Handarbeit.

Für Davidoff wird wenig bezahlte Reklame gemacht, andererseits jedoch viel Aktivität aufgewendet, um über Presse und andere Medien sowie durch Vorträge bei exklusiven Klubs wie Rotary und Lions und in kleineren Veranstaltungen für Freunde des Zigarrenrauchens Public Relations zu treiben. Hierbei wird stufenweise vorgegangen. Zunächst wird, wie schon erwähnt, durch die Davidoff-Zentrale der firmeneigene Verkaufsapparat mit allen Geheimnissen, die den Zigarrengenuß umgeben, vertraut gemacht. Das gleiche geschieht in allen weiteren Stufen des Verkaufs. Im Fachgeschäft ebenso wie in der Gaststätte gehört hierzu auch eine zwar zurückhaltende, aber für den richtigen Rauchgenuß notwendige Aufklärung über Abschneiden, Anzünden und Handhabung während des Abrauchens.

Die Instruktionskurse für das Personal und der dadurch erzielte Verkaufserfolg haben unter Beweis gestellt, daß das „richtige" Zigarrenrauchen 'regelrecht „eingeübt" werden muß, damit dem Neuling unter den Zigarrenrauchern gleich ein Genuß bereitet wird, der ihn zum Rauchen der nächsten Zigarre motiviert. Eine besondere Rolle spielt hierbei das Fachgeschäfts-, Hotel- und Gaststätten-Personal. Es hat Katalisatorfunktionen dafür, Kenntnisse über

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...nders entwickel... Davidoff geht von ...htat zugeschnitte... ...aus, der auf eine ...ucht anhebt, an ...verkauft werden ...ger, aber etwas ...die Davidoff-Sorti... ...die Verarbeitung ...klassiger Tabake ...endweicher Scho... ...nogenisierten Ta... ...der Herstellung in ...

...wenig bezahlte ...anderseits jedoch ...wendet, um über ...tedien sowie durch ...siven Klubs wie ...und in kleineren ...Freunde des Zigar... ...Relations zu trei... ...tufenweise vorge... ...wird, wie schon ...Davidoff-Zentrale ...kaufsapparat mit ...den Zigarren... ...gemacht. Das ...allen weiteren ...im Fachgeschäft ...Gaststätte gehört ...r zurückhaltende, ...gen Rauchgenuß ...ung über Abschnei... ...Handhabung wäh...

...für das Personal ...lte Verkaufserfolg ...gestellt; daß das ...uchen regelrecht ...muß, damit dem ...Zigarrenrauchern ...eitet wird, der ihn ...nächsten Zigarre ...andere Rolle spielt ...hafts-, Hotel- und ...l. Es hat Katalisa... ...Kenntnisse über ...

...nehmen zum Tragen kommen. Jede Einzelheit muß stimmen. Es beginnt bei der Auswahl der Tabake, führt über das Kreieren der Formen, die Art und Gestalten der Packung und der Entwicklung von Verkaufsideen. Damit diese Linie immer nah beim Produkt bleibt, verfügt Oettinger über eine firmeneigene Public Relations- und Werbegesellschaft. Die neuerliche um alle Davidoff-Zigarren geschlungene weiße Rauchbinde, die oft am Deckblatt verklebt, ist solch eine Kleinigkeit mit weitgehender Wirkung. Hier muß der Zigarrenraucher umlernen. Was ihm traditionell als Sünde wider den Zigarrengeist beigebracht wurde, das Ablösen der Binde vor dem Anzünden, verkehrt sich ins Gegenteil. Auch äußerlich zeigt man mit Hilfe dieses Signets beim Rauchen, daß man eine Davidoff raucht. Nebeneffekt dabei ist, daß diese Rauchbinde für Raucher, die beim Genuß in zu tiefes Nachdenken verfallen, die Stelle gekennzeichnet wird, wo der ausgewogene Genuß aufhört und der Zigarrenstummel im Aschenbecher seinen Brand beenden sollte.

Die Zusammenarbeit zwischen Zino Davidoff und Dr. Ernst Schneider hat seit dem Zusammengehen im Jahre 1969 eine klare Linie beibehalten, die auf Qualität und Exklusivität aufgebaut ist. Hierzu gehört auch das Prinzip, daß alle Davidoff-Zigarren aus Havannatabaken und in Kuba hergestellt werden. Produktionsstätte ist die dem Staatsunternehmen Cubatabaco gehörende Davidoff-Fabrik in Kuba, für die die Tabake bester Plantagen wie unter anderem St. Luis und St. Juan reserviert sind. Lediglich die kleinformatigen Mini-Davidoff-Zigarillos sind mit einem Umblatt aus Sumatra versehen, wozu neuerdings als Ausnahme auch die etwas voluminöseren Formate Demi-Tasse und Long Panatella gehören, um dem Zigarrenraucher über leichte Zigarillos den Weg zu guten Havannas zu ermöglichen.

Nebensortiment und zweites Bein

Erwähnenswert ist noch, daß unter dem Namen Davidoff auch ein Qualitätsan...

...e eine ideale Ergänzung darstellen. Der speziell auf Zigarren fixierte Tabakspezialist Davidoff, gleichzeitig ein Fachhändler mit dem großartigen Format, das sich in den zwanziger Jahren vielerorts im Tabakwaren-Einzelhandel herausbildete und heute bedauerlicherweise nur noch selten anzutreffen ist, und der in der tabakverarbeitenden Industrie, im Tabakwaren-Großhandel sowie im Tabakwaren-Im- und -Export versierte Dr. Ernst Schneider, der das Image des Davidoff-Geschäftes in Genf mit seinem weltweiten Flair organisatorisch mit einem wohldurchdachten Marketingkonzept auf eine internationale Basis stellte. Eine stabile Grundlage lieferte hierfür das Oettinger-Familienunternehmen mit Sitz in Basel, das mit seinen Im- und Export-Aktivitäten, seinen Einzelhandelsfilialketten und seinem Tabakwarengroßhandel zu den führenden Tabakwarenhandelshäusern der Schweiz zählt. Als Holding der gesamten Oettinger- und Davidoff-Aktivitäten dient die IMEX AG. Sie ist unterteilt in 14 Profitzentren aus dem Produktbereich der Tabakwaren und Raucherbedarfsartikel. Die Davidoff-Aktivitäten innerhalb der Oettinger-Gruppe betreut die Davidoff International in Basel. Die Davidoff Extension in Zug ist die Holdinggesellschaft für das internationale Davidoff-Geschäft. Die Davidoff & Cie. betreibt das Davidoff-Pilotgeschäft in Genf. Zino Davidoff ist selbstverständlich an diesen Gesellschaften beteiligt. Das Zollfreilager der Gesamtgruppe befindet sich wie der Hauptsitz des Unternehmens in Basel. Prinzip beim Sektor Import-Zigarren ist hier eine Mindestlagerzeit von einem Jahr.

Insgesamt beschäftigen die in der Oettinger-Gruppe zusammengefaßten Unternehmen rund 270 Mitarbeiter und erzielten pro Jahr einen Umsatz von rund 270 Millionen Schweizer Franken. Hierin eingeschlossen sind auch die Davidoff-Produkte, deren Umsatzanteil zwar als Geschäftsgeheimnis behandelt wird, das aber die wichtigste Lokomotive dafür ist, die Entwicklung der Gesamtgruppe über die Grenzen der Schweiz hinauszutragen.

TRANSLATION

Each puff a franc:

The Secret of the "big" cigar

A visit to Zino Davidoff in Geneva

The Genevan detail-tobacconist Zino Davidoff has grown to be a majesty in the world of the cigar. To achieve this he did not use any tricks or brilliant marketing ideas. The basis of this success was the love for the real brown tobacco product, a love that was and is shared by many tobacconists. His taste, like the one described by Oskar Wilde was very simple, he settled for the best: the real Havana Cigar. That in Geneva as city of international institutions and organizations this was the highest priced, was more advantageous than disadvantageous.

After last year's large fire, the totally new Davidoff dealershop was erected in the city of Geneva, on Rue de Rive 2, at the same place it had been founded 70 years ago by Davidoff's father. The friendly and clearly arranged business premises covers 90 m^2 to which with economical using an area of 46 m^2 for stock and office and a Havana cellar of 30 m^2 are linked. Twelve salesmen and women and are proud to provide good service and offer their clients an assortment including all the main tobacco products of the world. Out of these especially the Havana cigar is traditionally the centerpiece, which has led the name "Davidoff" to worldwide fame. This is a matter of best products coming from the maximum valued tobacco cultivations of Cuba, with priority products from the Vuelta Abaja District.

In the beginning a tobacco-bar

The Davidoff business in Geneva developed out of a tobacco-bar with an assortment of mainly cigarettes which originated out of self-production and which were, at that time, handmade.

Only later did the cigar advance to become the centerpiece of the assortment. Slowly the reputation of the Davidoff business as a central source of purchase for cigar smokers who carrried the fame of the house over the border of Geneva and Switzerland, was established. Zino Davidoff not only offered his clients top-quality products but also always made it his concern to teach them "real" smoking. The following little episode shows, how tiresome this could sometimes be. Years ago, a farmer from the Berner Oberland, who was attracted by the assortment of real Havanas in the

shop-window, entered Davidoff's shop. He explained to Davidoff that he was by all means quite wealthy and could afford to grant himself a few of the expensive cigars (Stumpli). He went on to say, that he was a cigar smoker for years now and relished them - he mentioned a brand out of mass production - but he would like a case of finest Havana cigars and went his way. After 8 days he returned and complained that he hadn't really enjoyed the expensive cigars; they had always extinguished, whereas this had never happened before with the cheaper ones. Maybe he's done something wrong? Davidoff said, that that could well be possible and suggested they try it together. He lit each of them a Havana with expertise handling and mentioned that this cigar had to be smoked with regular and slow puffs; one shouldn't pull hastely and should take care that the cigar remained properly

burning. One had to devote oneself with affection and attention to smoking good cigars as otherwise it could possibly extinguish. And Zino Davidoff also advised him to keep a slow inhaling rythym. He should keep in mind that each draw cost him a franc. This way he would really appreciate this pleasure. Mr. Davidoff confirmed that the farmer from Berner Oberland has since remained a faithful friend to the expensive cigars from Havana.

Davidoff's "Cigar-International"

Until 12 years ago, Zino Davidoff was sole owner of the Genevan business. Since he doesn't have any heirs which are interested in carrying on - his only daughter is married to a doctor from Zurich - he put it up for sale. So it came to an agreement with Dr. ERnst Schneider, co-partner and manager of the tobacco wholesale and retail business Oettinger AG

in Basel, who was willing to pay the proud price Zino Davidoff demanded for his international respect-enjoying "cigar shop" in the Genevan old town. Zino Davidoff, as bearer of the Davidoff tradition, remained in touch with the enterprise as partner to Dr. Ernst Schneider and is at the company's disposal as an expert for selection and mixture of the cigar-tobacco as well as advisor for the formation of the assortment and sale, not only for the Genevan shop but also for the other Davidoff pilot shops which have been established in other countries.

All in all the Davidoff chain now controls 12 such pilot shops. Besides Geneva as headquarters the chain hold firms in London, Paris, Amsterdam, Bruxelles, Toronto, Montreal, Singapur, Kuala Lumpur, Djakarta and Frankfurt as well as two firms in Hong Kong, one of them on the peninsula Kaulum. Beyond that

the sale and distribution of the Davidoff cigars is worldwide in the hands of 22 agencies who, like for example the firm Gebruder Heinemann in Germany, not only supply the markets with the Davidoff assortment according to a special method but also organize the corresponding "sales aides". A part of this is proper instruction in cultivation of the assortment during storage of cigars and a detailed schooling of the salespeople with the goal of giving the smokers the knowledge needed for a perfect tobacco enjoyment through appropriate handling of the cigar ritual. Storehouses in the particular countries channel the Davidoff assortment to a limited number of especially checked and chosen representatives. They are mostly tobaccoware retail businesses, which not only supply other well knwon trade enterprises with Davidoff cigars but also

hotels and restaurants with good reputation. In general a Humidor with the assortment Davidoff Grand Reserve with 5 cigar types, one cigar cutter in form of a pair of scissors and long matches to kindle the cigar is put to their disposal. A control system makes sure that the assortment is being completed and that the condition of the Humidor is constantly checked, to secure that Davidoff smokers will always receive a product in accordance to the Davidoff waulity name through optimal care and conditioning. The Davidoff system with pilot and deposit enterprises as well as the selected sales places is practicable in those countries, where no exclusive control regulates the market. Here restriction of the assortment can only be aimed at but not controlled as the supply has to occur over the sales instrument of the exclusive control.

Less, but something good

The marketing idea developed by Dr. Schneider for Davidoff originates from the basic thought of individuality, of approaching an exclusive smoker class, to which cigars can be sold under the slogan: "Smoke less, but something good". For this reason the principle for the Davidoff assortment is the manufacturing of only first-class tobacco, mainly handmade, without use of any beauty products or homogenized tobaccos. For Davidoff not much payed advertisement is made, on the other hand a lot of activity is devoted to Public Relations for friends of cigar smoking in form of talks in exclusive clubs such as Rotary and Lions and at smaller meetings as well as through other media and the press. Hereby the proceddings are stepwise. First of all, as already mentioned, the company's own sales instrument is made acquainted with

all the secrets of cigar smoking. The same happens on every other sales level. The instruction courses for the staff and the herethrough obtained sales success have proven that "proper" cigar smoking has to be "trained", no that the beginner will be motivated to smoke his next cigar. The detail sales, hoel and restaurant staff play here a special role, as the "trained" cigar smokers will again pass the ritual on to their friends and so those cigar smokers witout any "smoke schooling" are also reached.

Cigars treated like beautiful women

According to Dr. Schneider, cigars have to be treated like beautiful women; one has to love them to fully enjoy them. The Davidoff concept consists of a lot of details: starting with the choice of tobacco and forms in the creation of package and to the development of sales

ideas. In order to keep this line close to the product, Oettinger holds a company-owned Public Relations firm. The new white "belly-band" around the Davidoff cigar is such a detail with far reaching effect. Here the cigar smoker has to learn: the detachment of the band before kindling the cigar, which traditionally was a sin against the cigar spirit, is now the contrary. This is also a sign to the others that one is smoking a Davidoff.

The cooperation between Zino Davidoff and Ernst Schneider has kept a straight line since their union in 1969, which is based on quality and exclusiveness. This also includes the principle that all Davidoff cigars are manufactured in Cuba and out of Havana tobacco. Production place is the Davidoff factory which belongs to the state-owned enterprise "Cubatobacco" in Cuba, for which tobacco from the best plantations such as St. Luis

and St. Juan is reserved. Only the Mini-Davidoff Cigarillos have a cover leaf from Sumatra. Recently as an exception the larger sized Demi-Tasse and Long Panatelly have joined this category in order to enable cigarillo smokers to go the way to good Havanas.

By assortment and second pillar

Worth mentioning is that there is also a quality offer of pipes, pipe tobacco and smoker accessories on the market under the name of "Davidoff". As a second pillar besides the Davidoff Havana business, the Zino assortment was established with Sumatra, Brazil and other internationally known tobaccos, to which also are counted cigars produced in Honduras. The rule "only good quality out of good tobacco" also applies to the Zino assortment.

The Oettinger Group

With the union of Ernst Schneider and Zino Davidoff, two personalities found together, which are an ideal supplement to one another for the development of a new marketing concept for cigars. Zino Davidoff is tobacco specialist and also dealer of outstanding reputation which was established in the 20's in many places in tobacco detail trades (and which is regretfully found rarely nowadays). Dr. Ernst Schneider is well versed in the tobacco import and export business and brought the Davidoff business, with his worldwide known flair and well thought out marketing concept, to an international basis. The family enterprise Oettinger in Basel supplies a firm foundation with its import and export activities, detail-trade-chains and tobacco wholesale. This company is one of the leading tobacco wholesale. This company is one of the

leading tobacco wholesale traders in Switzerland. IMEX is the holding of the complete Oettinger and Davidoff activities. IMEX is divided into 14 profit centers. The Davidoff activities within the Oettinger Group is handled by Davidoff International in Basel. Davidoff Extension in Zug.